

**WESTERN STATES CONTRACTING ALLIANCE
PARTICIPATING ADDENDUM
FOR
DATA COMMUNICATIONS EQUIPMENT
BETWEEN
THE STATE OF WASHINGTON, DEPARTMENT OF INFORMATION
SERVICES
AND
IBM CORPORATION**

The undersigned hereby represents, acknowledges, and agrees as follows:

1. The undersigned is a "Participating Entity" which shall be defined as Participating Entity states of WESTERN STATES CONTRACTING ALLIANCE (hereafter "Participating Entity"):
(i) which requests equipment pursuant to the terms and conditions of the STATE OF UTAH STATEWIDE CONTRACT AR1474 (hereafter the "Master Agreement") by executing this Participating Addendum ("PA"); and, (ii) whose request for the sale of equipment by IBM Corporation ("IBM"), at its sole discretion, is accepted by IBM executing this PA.
2. The undersigned Participating Entity is executing this PA for the purpose of purchasing data communications equipment from IBM, pursuant to the Master Agreement by and between State of Utah and IBM. Participating Entity shall be subject to all terms and conditions of this PA and the Master Agreement.
3. Scope: The general purpose of this Contract is to provide: Data Communications Equipment and Associated OEM Maintenance & Training. Other IBM value-add services included in the Master Agreement are excluded from the scope of this PA between State of Washington DIS and IBM.
4. Changes to the Master Agreement specific to the State of Washington, specified in the Attachment(s) to this PA, are incorporated herein by this reference.
1. Primary Contact/ Legal Notices:
 - 5.1. Any notice or demand or other communication required or permitted to be given under this PA or applicable law shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid certified mail, return receipt requested, or via facsimile, to the parties at the addresses and fax number provided in this section. For purposes of complying with any provision in this PA or applicable law that requires a "writing," such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form.

5.2. Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.

5.3. In the event that a subpoena or other legal process commenced by a third party in any way concerning the Services provided pursuant to this PA is served upon IBM or Participating Entity, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. IBM and Participating Entity further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

5.4. For Participating Entity:

State of Washington Department of Information Services	
Attn: TSD Contract Administrator	
Mailing Address:	Street Address:
PO Box 42445	2411 Chandler Court SW
Olympia, WA 98504	Olympia, WA 98502
Phone: (360) 725-4200	
Fax: (360) 664-0711	
E-mail: mcadmin@dis.wa.gov	

5.5. For IBM:

IBM	With Copy To:
Attn: Michael Andritch	Attn: Tom Hasting
410 11 th Ave SE	
Suite 200	15400 SW Koll Parkway
Olympia, WA 98501	Beaverton, OR 97006
Phone: 360-705-8880	Phone: 503-578-2355
Fax: 360-352-6844	Fax: 503-578-2355
E-mail: mjandrit@us.ibm.com	E-mail: thasting@us.ibm.com

6. Lease Agreement. Lease agreement terms and conditions have not been approved for use by Purchaser(s) under this PA.

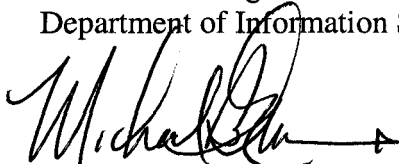
7. This PA together with its Attachment(s) and the Master Agreement, Number AR1474, together with its Attachment(s), (administered by the State of Utah), set forth the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the

terms and conditions of this PA and the Master Agreement, shall not be added to or incorporated into this PA or the Master Agreement, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this PA and the Master Agreement shall prevail and govern in the case of any such inconsistent or additional terms. All Orders issued by Purchasers within the jurisdiction of this PA shall include Master Agreement Number AR1474.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Approved

State of Washington
Department of Information Services



Signature

Michael B. Emans

Print or Type Name

Assistant Director

Title

3/10/03

Date

Approved

IBM Corporation



Signature

Keith Unterschute

Print or Type Name

Network Sales Specialist

Title

3/5/03

Date

Approved as to Form

State of Washington

Office of the Attorney General

Approved as to form by Chip Holcomb
via email dated 3/4/03, attached

Signature

Chip Holcomb

Print or Type Name

Senior Counsel, AGO

Title

Date

Contractor Information

Contractor's UBI Number: 409000208

Minority or Woman Owned Business
Enterprise

Yes

(Certification Number)

No



Kirk, Marie (DIS)

From: Holcomb, Chip (ATG)
Sent: Tuesday, March 04, 2003 11:42 AM
To: Kirk, Marie (DIS)
Subject: RE: IBM-WA PA

As per our conversation, looks OK

Chip Holcomb
Senior Counsel, Attorney General's Office
P.O. Box 40108
905 Plum St., Bldg. 3
Olympia, WA 98504-0108
voice: (360)753-9671
fax: (360) 586-3593
email: chiph@atg.wa.gov

-----Original Message-----

From: Kirk, Marie (DIS) [mailto:MarieK@DIS.WA.GOV]
Sent: Monday, March 03, 2003 4:12 PM
To: Holcomb, Chip (ATG)
Subject: IBM-WA PA

Here's the IBM PA. I have highlighted the areas that call for your attention. I've enclosed the Utah Master Agreement also.

Not sure how to get approval as to form, since I have one more round with IBM. Might happen tomorrow morning, once I get your feedback on what we have now. Anyway . . .

<< File: CHIP 03-03-03 IBM-WA PA.doc >>
Contract.doc >>

<< File: IBM -Utah WSCA

**ATTACHMENT 1
WESTERN STATES CONTRACTING ALLIANCE
PARTICIPATING ADDENDUM
FOR
DATA COMMUNICATIONS EQUIPMENT
BETWEEN
THE STATE OF WASHINGTON, DEPARTMENT OF INFORMATION SERVICES
AND
IBM CORPORATION**

1. DEFINITIONS.

“Acceptance Date” shall mean: (i) for Contractor-installed Products or Products undergoing formal acceptance testing, the date of Purchaser’s written notification to Contractor of acceptance of the Products; (ii) for other Products, the twentieth (20th) Business Day after the date of shipment.

“Confidential Information” shall mean information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 RCW or other state or federal statutes. Confidential Information includes names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver’s license numbers, medical data, law enforcement records, Purchaser source code, Purchaser network configuration information, or Purchaser security information.

“Contractor”/“Offeror”/“Vendor” shall mean IBM Corporation, its employees and agents. It shall also include any Subcontractor retained by Contractor as permitted under the terms of this PA.

“DIS” shall mean the State of Washington, Department of Information Services.

“Effective Date” shall mean the first date this PA is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this PA.

“Order Document”/“Order” shall mean any official State document and attachments thereto specifying Products and Services to be purchased or licensed from Contractor under this PA. Each Order shall specify on its face the types and quantities of Products and/or Services to be furnished by Contractor pursuant to the Order, the delivery date(s), and the installation site(s).

“Participating Addendum” or “PA” shall mean this agreement between the Contractor and the State of Washington, a Participating State, that clarifies the operation of the Master Agreement and may add other state-specific language or other requirements.

“Participating Entity” shall mean a member of WSCA who has indicated its intent to participate, as disclosed in the solicitation, or who subsequently signs a PA.

“Product(s)” shall mean data communications equipment, specifically, Cisco, Lucent, Nortel or Alcatel routers, Cisco, Extreme, Nortel or Alcatel switches, and Cisco LAN/WAN Wireless, associated components, software and documentation, as specified in the Master Agreement. Stand-alone voice equipment is specifically excluded from the definition of Products that can be sold under this PA.

“Proprietary Information” shall mean information owned by Contractor to which Contractor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by United States copyright, patent, trademark, or trade secret laws.

“Purchaser” shall mean DIS and any other state agency, or political subdivision (including public schools, colleges or universities), or qualified non-profit organization of the state of Washington, who have a properly executed Interlocal Cooperative Agreement (Customer Service Agreement) with DIS. **“Purchaser”** shall mean the same as authorized Purchasing Entities, Participating Entities, Procuring Agencies, or Customer.

“Service(s)” shall mean installation, training and maintenance services for eligible Products.

“Subcontractor” shall mean one not in the employment of Contractor, who is performing all or part of the business activities under this PA under a separate contract with Contractor. The term “Subcontractor” means Subcontractor(s) of any tier. For purposes of this PA, the term “Subcontractor” does not include the original equipment manufacturers (OEMs) identified in the Master Agreement (i.e., Cisco, Nortel, Alcatel, Lucent and Extreme) or any of such OEMs’ authorized service providers for maintenance or training.

2. ORDER OF PRECEDENCE. In the event of any inconsistency in this PA, the inconsistency shall be resolved in the following order of precedence:

- (a) Sections of this PA, including its Attachments;
- (b) WSCA Master Agreement Number AR1474;
- (c) Contractor’s Response to Request for Proposal (RFP) LW1907;
- (d) Utah’s Request for Proposal LW1907;
- (e) The administrative terms contained on Purchaser’s Order Documents such as description of product or service ordered, quantity, billing address, etc., unless otherwise agreed to at the time of order.

3. SURVIVORSHIP. All license and purchase transactions executed and Services provided pursuant to the authority of this PA shall be bound by all of the terms, conditions, prices and discounts set forth within this PA or the Master Agreement, notwithstanding the expiration of the initial term of this PA or the Master Agreement or any extension thereof. Further, the terms, conditions and warranties contained in this PA and the Master Agreement that by their sense and context are intended to survive the completion of the performance,

cancellation or termination of this PA or Master Agreement shall so survive. In addition, the terms of the sections titled **Contractor's Commitments, Warranties and Representations; Protection of Purchaser's Confidential Information; Order of Precedence; Publicity; Patent and Copyright Indemnification.**; and **Disputes** shall survive the termination of this PA.

4. ADVANCE PAYMENT PROHIBITED. No advance payment shall be made for Products or Services furnished by Contractor pursuant to this PA. Notwithstanding the above, payments for maintenance may be made in advance on an annual basis in accordance with the applicable OEM manufacturer or service providers terms available for the maintenance services under the Master Agreement.

5. TAXES. Purchaser will pay sales and use taxes, if any, imposed on the Products or Services acquired hereunder. Contractor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property.

6. INVOICE / PAYMENT. Contractor will submit properly itemized invoices to each Purchaser within forty-five (45) days of delivery of Products and/or Services at the address(es) indicated in the Order Document. Invoices shall provide and itemize, as applicable:

- a) The Master Price Agreement number, AR1474;
- b) Purchaser's name and address and Order Document number;
- c) Contractor name, remittance address, phone number, e-mail address, fax number and Federal Taxpayer Identification Number;
- d) Description of Products, including price, quantity ordered, model and serial numbers;
- e) Date(s) of delivery and/or date(s) of installation and set up;
- f) Price for each item, or manufacturer's list price for each item and applicable discounts;
- g) Description of Services provided, including dates;
- h) Net invoice price for each item;
- i) Applicable taxes;
- j) DIS Administration Fee (0.5% or 0.005 of the total purchase price);
- k) Other applicable charges; and
- l) Total invoice price

6.1. Payment for completion of a Order is due within thirty (30) calendar days after receipt and Acceptance of Products or Services or thirty (30) calendar days after receipt of properly prepared invoices, whichever is later. After forty-five (45) days Contractor may assess overdue account charges up to a maximum rate of one percent (1%) per month on the outstanding balance. Payments may be remitted by mail, or via electronic funds transfer. Payment will not be considered late if payment is deposited electronically in Contractor's bank account or if a

check or warrant is postmarked within thirty (30) calendar days of Acceptance of the Products or Services or receipt of properly prepared invoice, whichever is later.

6.2. Payments for maintenance services may be made in advance on an annual basis in accordance with the applicable OEM manufacturer or service providers terms available for the maintenance services under the Master Agreement.

7. **TITLE.** Upon receipt of payment therefor, Contractor shall convey to Purchaser good title to any equipment, free and clear of all liens, pledges, mortgages, encumbrances, or other security interests.

8. **ACCEPTANCE TESTING.** Contractor agrees that Purchaser may choose to require formal acceptance testing on Products purchased under the PA. Such acceptance testing criteria shall be mutually negotiated and agreed to by both Purchaser and Contractor on an individual case basis. In that case, no payment will be authorized until the Product has met the standard of performance and has been accepted, in writing, by Purchaser.

9. **CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS.**

[Note: This language is from the Washington State Agreement 92-PUR-010.]

9.1. Any written commitment by IBM within the scope of this PA shall be binding upon IBM. Failure of IBM to fulfill such a commitment may constitute breach and shall render IBM liable for remedies due the Customer under the terms of this PA.

9.2. For purposes of this PA, a commitment by IBM, which must be in writing, is: (i) prices and options committed to remain in force over a specified period(s) of time; (ii) any warranty or representation made by IBM in a proposal as to hardware or software performance or any other physical, design or functional characteristics of a machine, software package, system or other product; (iii) any warranty or representation made by IBM concerning the characteristics or items in (ii) above, contained in any literature, descriptions, drawings or specifications accompanying or referred to in a proposal; (iv) any modification of or affirmation or representation as to the above which is made by IBM in writing whether or not incorporated into a formal amendment to the proposal in question; and (v) any representation by IBM in a proposal or supporting documents as to training to be provided, services to be performed, prices and options committed to remain in force over a fixed period of time or any other similar matter regardless of the fact that the duration of such commitment may exceed the duration of this PA.

10. **PROTECTION OF PURCHASER'S CONFIDENTIAL INFORMATION.**

10.1 Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this PA or its performance may consist of

information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 RCW or other state or federal statutes ("Confidential Information"). Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this PA, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this PA, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without Purchaser's express written consent or as provided by law. Contractor agrees to release such information or material only to employees or Subcontractors reasonably necessary to further the purpose of this PA. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

10.2 Immediately upon expiration or termination of this PA, Contractor shall, at Purchaser's or DIS' option: (i) certify to Purchaser or DIS that Contractor has destroyed all Confidential Information; or (ii) return all Confidential Information to Purchaser; or (iii) take whatever other steps Purchaser or DIS requires of Contractor to protect Purchaser's Confidential Information.

10.3 DIS and Purchaser reserve the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this PA. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.

10.4 Violation of this section by Contractor or its Subcontractors may result in termination of this PA and demand for return of all Confidential Information, monetary damages, or penalties.

10.5 Contractor may disclose, publish, disseminate, and use Confidential Information that is:

- a) already in its possession without obligation of confidentiality;
- b) developed independently;
- c) obtained from a source other than Purchaser without obligation of confidentiality;
- d) publicly available when received, or subsequently becomes publicly available through no fault of Contractor; or
- e) disclosed by Purchaser to another without obligation of confidentiality.

10A. RESIDUALS. Either Contractor or Purchaser may use in its business activities the ideas, concepts and know-how contained in disclosed Confidential or Proprietary Information that are retained in the memories of Contractor's or Purchaser's employees who have had access to the Confidential or Proprietary Information under this PA. Nothing in this paragraph permits either party to disclose the source of information, or any financial, personal, medical, statistical or personnel data or business plans of the other party.

11. PUBLICITY. Entering into this PA with Contractor is not in any way an endorsement of Contractor or Contractor's Services by DIS or Purchasers and shall not be so construed by Contractor in any advertising or other publicity materials.

- 11.1 Contractor agrees to submit to Purchaser or DIS, all advertising, sales promotion, and other publicity materials relating to this PA or any Product or Service furnished by Contractor wherein Purchaser's or DIS' name is mentioned, language is used, or Internet links are provided from which the connection of Purchaser's or DIS' name with Contractor's Products or Services may, in Purchaser's or DIS' judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of Purchaser, or DIS *prior* to such use.
- 11.2 DIS hereby acknowledges and agrees that Contractor will post pricing for this PA on its web site that contains other advertising for Contractor. Contractor acknowledges and agrees that DIS will post a copy of the Master Agreement and of this PA on its Technology Mall, or successor website, together with Contractor's logo and a link to Contractor's WSCA Data Communications pricing.

12. RECORDS ADMINISTRATION. The Contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this PA. These records will be retained by the Contractor for at least six (6) years after the contract terminates, or until all audits or litigation initiated within the six (6) years have been completed, whichever is later. The State's or any third-party's access to Contractor's books and records shall not include access to personnel, profit, or internal cost data. In addition, the parties shall mutually agree to what documents and records the State or any third-party shall gain access prior to the State or any third-party accessing such records and/or data. The State or any third-party shall bear all costs associated with all audit activity. Contractor understands that the State will periodically perform "invoice audits" when Contractor will be requested to provide specified copies of Purchaser invoices. Contractor will provide such invoices within 30 days of the request at no charge to the State.

13. PATENT AND COPYRIGHT INDEMNIFICATION.

[Note: This indemnification language is from the Washington State Agreement 92-PUR-010.]

13.1 IBM will, at its expense, defend the State and/or Customer against a claim that machines or programming supplied hereunder infringes a U.S. patent or copyright, or that the machines' operation pursuant to a current release and modification level of any programming supplied by IBM infringes a U.S. patent, IBM will pay resulting costs, damages and attorney's fees finally awarded provided that: (i) The Customer promptly notifies IBM in writing of the claim; and (ii) IBM has sole control of the defense and all related settlement negotiations.

13.2 If such claim has occurred, or in IBM's opinion is likely to occur, the Customer agrees to permit IBM at its option and expense, either to procure for the Customer the right to continue using the machines or programming or to replace or modify the same so that they become non-infringing and functionally equivalent. If neither of the foregoing alternatives is reasonably available, the Customer agrees to return the machines or programming at IBM's risk and expense upon written

request by IBM. In the event the product has been installed less than one year, transportation to the initial installation site paid by the Customer shall be refunded by IBM. No termination charges will be payable on lease or rental machines returned hereunder, and the Customer will pay only those charges which were payable prior to the date of such return. For purchased machines returned hereunder, IBM will credit the Customer an amount equal to the original purchase price, reduced by one-sixth thereof for each year the machine has been installed as a purchase, lease and/or rental machine with the Customer. The credit for fractional parts of a year shall be prorated on the basis of 365 days per year.

13.3 IBM has no liability for any claim based upon:

- a) the combination, operation or use of any machines or programming supplied hereunder with equipment, data or apparatus not supplied by IBM or with any program other than or in addition to programming supplied by IBM;
- b) modifications, which are not authorized by IBM, to the machines or any programming supplied hereunder, if such claim would have been avoided by the absence of such alteration or modification;
- c) use of the program or machine in other than its specified operating environment;
- d) infringement of a non-IBM product alone, as opposed to its combination with Products IBM provides to the Customer as a system under this Agreement.

13.4 The foregoing states the entire obligation of IBM with respect to infringement of patents and copyrights.

14. INSURANCE COVERAGE. Contractor shall, during the term of this PA, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington and having a rating of A-, Class VII or better, in the most recently published edition of *Best's Reports*.

14.1 In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this PA, Contractor shall provide written notice of such to DIS within ten (10) Business Days of Contractor's receipt of such notice. Failure to buy and maintain the required insurance may, at DIS' sole option, result in this PA's termination.

The minimum acceptable limits shall be as indicated below:

- a) Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;

- b) Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident;
- c) Employers Liability insurance covering the risks of Contractor's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease;
- d) Umbrella policy providing excess limits over the primary policies in an amount not less than \$1 million;

14.2 Contractor shall pay premiums on all insurance policies. Such insurance certificate(s) shall name DIS as an additional insured on all general liability, automobile liability and umbrella policies. Such insurance certificates shall also reference the Master Agreement number AR1474 and this PA number, 03-01, and shall have a condition that they not be revoked by the insurer until forty-five (45) calendar days after notice of intended revocation thereof shall have been given to DIS by the insurer.

14.3 All insurance provided by Contractor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State, subject to the hold harmless/indemnification agreements under this PA, and shall include a severability of interests (cross-liability) provision.

14.4 Contractor shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

14.5 Contractor shall furnish to DIS copies of certificates of all required insurance within thirty (30) calendar days of this PA's Effective Date, and copies of renewal certificates of all required insurance within thirty (30) days after the first business day in the month of April for each successive year that this PA or the Master Agreement is in full force and effect. Failure to provide evidence of coverage may, at DIS' sole option, result in this PA's termination.

14.6 By requiring insurance herein, DIS does not represent that coverage and limits will be adequate to protect Contractor. Such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to the State in this PA.

15. INDUSTRIAL INSURANCE COVERAGE. Prior to performing work under this PA, Contractor shall provide or purchase industrial insurance coverage for its employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this PA. DIS or Purchaser will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for Contractor, or any Subcontractor or employee of Contractor, which might arise under the industrial insurance laws during the performance of duties and Services under this PA.

16. NONDISCRIMINATION. Contractor agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 U.S.C. §12101 *et seq*), which prohibit discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities, and Title 49.60 RCW, Washington Law Against Discrimination. The Contractor further agrees to furnish information and reports to requesting State(s), upon request, for the purpose of determining compliance with these statutes. Contractor agrees to comply with each individual state's certification requirements, if any, as stated in the special terms and conditions. This contract may be canceled if the Contractor fails to comply with the provisions of these laws and regulations. The Contractor must include this provision in every subcontract relating to purchases by the States to ensure that Subcontractors are bound by this provision.

17. CONTRACTOR'S PROPRIETARY INFORMATION. Contractor acknowledges that DIS and Purchaser are subject to chapter 42.17 RCW and that this PA shall be a public record as defined in chapter 42.17 RCW. Any specific information that is claimed by Contractor to be Proprietary Information must be clearly identified as such by Contractor. To the extent consistent with chapter 42.17 RCW, DIS and Purchaser shall maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view Contractor's Proprietary Information, DIS or Purchaser will notify Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, DIS or Purchaser will release the requested information on the date specified.

18. DISPUTES.

18.1. In the event a bona fide dispute concerning a question of fact arises between Purchaser and Contractor and it cannot be resolved between the parties, or with the help of the TSD Contract Administrator, either party may initiate the dispute resolution procedure provided herein.

18.2. The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three (3) Business Days. The initiating party shall have three (3) Business Days to review the response. If after this review a resolution cannot be reached, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute.

- a) If the dispute cannot be resolved after three (3) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within three (3) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members

will appoint a third individual to the Dispute Resolution Panel within the next three (3) Business Days.

- b) The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.
- c) Each party shall bear the cost for its panel member and share equally the cost of the third panel member.

18.3. The determination of the Dispute Resolution Panel may be appealed to a court of competent jurisdiction in the State of Washington.

18.4. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible

18.5. Purchaser and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this PA that are not affected by the dispute.

18.6. If the subject of the dispute is the amount due and payable by Purchaser for Services being provided by Contractor, Contractor shall continue providing Services pending resolution of the dispute provided Purchaser pays Contractor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Contractor, in good faith, believes is due and payable.

19. DIS ADMINISTRATIVE FEE. All purchases made under this PA are subject to a DIS Administration Fee, to be collected by Contractor and remitted to DIS. The Administration Fee is one half of one percent (.5% or .005) of the purchase price. The purchase price is defined as total invoice price less sales tax. The Administration Fee shall be invoiced by Contractor to all Purchasers as a separate detailed line item on Purchaser's invoice. Contractor shall remit the Administration Fee directly to the TSD Contract Administrator, along with the PA Activity Report. The check shall be payable to Department of Information Services.

20. DIS ACTIVITY REPORTING.

20.1. Contractor shall submit to the TSD Contract Administrator a Quarterly Activity Report of all Product and Service purchases made under this PA. The report shall identify:

- a) The Master Price Agreement (AR1474);
- b) Each Purchaser making purchases during that quarter ;
- c) The total invoice price, excluding sales tax for each Purchaser;
- d) Any adjustments from prior periods, if applicable
- e) The sum of all invoice prices, excluding sales tax, for all Purchasers; and
- f) The DIS Administration Fee.

20.2. The Activity Report and the DIS Administrative Fee shall be submitted in accordance with the following schedule:

Quarter Ending

March 31
June 30
September 30
December 31

Report Due

April 30
July 31
October 31
January 31

Contractor shall submit this report according to the layout specified by the TSD Contract Administrator. This report may be corrected or modified by the TSD Contract Administrator with subsequent written notice to Contractor. Quarterly **reports are required even if no activity occurred**. Upon request by DIS, Contractor shall provide, in the format requested, the contact information for all Purchasers during the term of the PA.

21. FAILURE TO REMIT REPORTS / FEES. Failure of Contractor to remit the Activity Report together with the Administration Fee may be considered a failure to perform on the part of Contractor, which may result in DIS terminating this PA with Contractor.

22. FORCE MAJEURE. Contractor, DIS or Purchaser shall not be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of Contractor, DIS or Purchaser. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than Purchaser acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of Contractor, DIS or Purchaser, or their respective Subcontractors.

23. E-COMMERCE WEB SITE. Contractor, at its sole expense, shall provide and maintain an Internet website that contains the complete offering of Products and Services and pricing available through the PA. The price list shall be tailored for state of Washington Purchasers, i.e., with the WSCA discount(s) applied. Contractor's website shall provide Purchasers with Product and Service descriptions, specifications, options, and Contractor contact information. A toll-free phone number is provided for product selection and problem resolution assistance. The state of Washington TechMall will link to Contractor's website

24. SUBCONTRACTORS. For services engagements performed under this PA, Contractor may, with prior written permission from DIS, which consent shall not be unreasonably withheld, enter into subcontracts with third parties for performance of any part of Contractor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor to DIS or Purchaser for any breach in the performance of Contractor duties. For purposes of this PA, the term "Subcontractor" does not include the original equipment manufacturers (OEMs) identified in the Master Agreement (i.e., Cisco, Nortel, Alcatel, Lucent and Extreme) or any of such OEMs' authorized service providers for installation, maintenance or training.

STATE OF UTAH
STATEWIDE CONTRACT AR-1474

1. CONTRACTING PARTIES: This Statewide Contract is between the **Division of Purchasing and General Services**, an agency of the State of Utah, and the following CONTRACTOR:

IBM Corporation

Name

420 East South Temple

Address

Salt Lake City, UT 84111

City

State

Zip

Federal Tax ID# 13-0871985 Vendor # 94833A

Vendor Contact Person: Jennifer Herron

Vendor Fax #: 801-328-6191

LEGAL STATUS OF CONTRACTOR

☐ Sole Proprietor

☐ Non-Profit Corporation

☒ For-Profit Corporation

☐ Partnership

☐ Government Agency

Commodity Codes: 20464, 20621, 20623

Vendor Phone #: 801-328-6638

Vendor email address: herronj@us.ibm.com

2. GENERAL PURPOSE OF CONTRACT: The general purpose of this Contract is to provide:
Data Communications Equipment and Associated OEM Maintenance & Training.
3. CONTRACT PERIOD: Effective date June 18, 2002 Termination date May 31, 2004 unless terminated early or extended in accordance with the terms and conditions of this contract. Renewal option: Renewable for one or two year terms up to four additional years.
4. PRICING AS PER ATTACHMENT A (Addendum 1)
PAYMENT TERMS: Net 30 Days
DAYS REQUIRED FOR DELIVERY: Based on availability
MINIMUM ORDER: 1
FREIGHT TERMS: F.O.B. Destination, Freight Prepaid
5. ATTACHMENT A: Addendum 1
ATTACHMENT B: WSCA Standard Terms and Conditions
Any conflicts between Attachment A and other Attachments will be resolved in favor of Attachment A.
6. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:
a. All other governmental laws, and regulations applicable to the goods and/or services authorized by this contract.
b. Utah State Procurement Code, Procurement Rules, RFP LW1907, and CONTRACTOR'S proposal response to RFP LW1907 dated 07-17-01.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR

STATE OF UTAH

Signature on file

Contractor's signature

Victor M. Ferreira

Government Industry Executive

Signature on file

Douglas G. Richins

Director, Division of Purchasing

Date

Date

ATTACHMENT A ADDENDUM 1

This Addendum serves to clarify terms and conditions of the contract between the State of Utah, referred to as STATE, and IBM Corporation, referred to as Contractor. The State of Utah is acting as the Lead State for the procurement process resulting in **WSCA Contracts for Data Communications Equipment, associated OEM Maintenance and Training.**

A. Manufacturer Product Line(s)

This contract authorizes the Contractor to provide the following manufacturer's Data Communications Equipment, Maintenance, and Training, as listed by category. No other equipment or maintenance will be covered under this contract, unless identified in an amendment to the contract. Products covered under this agreement are:

Routers: Cisco, Lucent, Nortel, Alcatel
Switches: Cisco, Extreme, Nortel, Alcatel
LAN/WAN Wireless: Cisco
CSU/DSU: N/A

B. State of Utah/WSCA Contract Manager

Debbie Gundersen
State of Utah
Division of Purchasing and General Services
State Office Building, Capitol Hill
Room 3150
Salt Lake City, UT 84114-1061

Email: dgundersen@utah.gov
Voice: (801) 538-3150
Fax: (801) 538-3882

C. Remittance Address

IBM Corporation
P O Box 61000 BO 1896
San Francisco, CA 94161-1896

D. Special Terms and Conditions

The parties agree to amend the terms and conditions as follows:

1. Order of Precedence
The order of precedence for the contract terms will be as follows:
 1. Addendum 1
 2. WSCA Terms and Conditions
 3. Contractor's Proposal Response to RFP LW1907
 4. RFP LW1907

2. Included Documents
The documents listed in Number 1 are included in the contract. It is agreed that any reference to the “Entire Agreement” includes these documents.
3. Public Information
The contract, including the price lists and the Response to the RFP, will be considered public documents and will be subject to government records policies in each state. Any public disclosure of such documents shall be in accordance with the applicable State’s government open records laws.
4. Arbitration
The STATE will not accept mandatory, binding arbitration. If there are any references to binding arbitration in the Contractor’s Response to the RFP, they will be null and void. The parties may agree, on a case by case basis, to voluntary arbitration to resolve contract issues.
5. Contract Period
The contract period, including renewal options, is listed on the STATE OF UTAH - Statewide Contract cover page. Renewals will be agreed to upon written authorization from both parties. All references to automatic renewals will be null and void.
6. Governing Law
This procurement shall be governed and the resulting price agreement construed in accordance with the laws of the State of Utah. The construction and effect of any Participating Addendum or order against the price agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity’s State. Venue for any claim, dispute or action concerning the construction and effect of the price agreement shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against the price agreement or the effect of a Participating Addendum shall be in the Purchasing Entity’s State.
7. Revisions to the WSCA Standard Terms and Conditions
 - A. The WSCA Standard Terms and Conditions have been revised and are incorporated into Attachment B.
 - B. Any additional changes to the WSCA Standard Terms and Conditions listed by the Contractor in the Response to the RFP will be null and void.
8. Revisions to Contractor’s Response to the RFP
 - A. The IBM Customer Agreement (ICA), which was submitted with Contractor’s Proposal Response to the RFP, will have the revisions listed in the Addendum to the IBM Customer Agreement. The ICA and Addendum to the ICA are attached as Exhibit 1 to this Addendum 1.
 - B. The Cisco Systems’ warranty included in Section 7.0 Supporting Materials of Contractor’s Proposal Response to the RFP is hereby replaced by the Cisco Systems’ warranty contained in Exhibit 2 to this Addendum 1.
9. State of Utah Only Requirement
Attachment C from the RFP will apply to the State of Utah only. This term is as follows:

E-PROCUREMENT: The State of Utah has awarded an e-procurement system contract that has a transaction fee of 1% per order with a ceiling of \$500 for any one order of products/services. There are expected cost savings to the Contractors with implementation of the system. The successful vendor must agree to terms as described in the following subparagraphs:

- a. The Contractor must agree to integrate its catalog of products/services into the e-procurement system. However, the requirements for integration of the Contractor's catalog of products/services into the State's e-procurement system are not available at time of contract award. The State and the Contractor agree to negotiate the integration requirements and any associated charges for integration of the Contractor's catalog of products/services into the State's e-procurement system at the time when the State finalizes the integration requirements. Once implemented, the Contractor must pay the transaction fees for orders placed against the contract. In the event, the Contractor fails to make payments, the State may: (i) eliminate the Contractor from the system in accordance with an escalation and review process developed by the State and its e-procurement vendor and (ii) terminate the State contract and award the contract to the next acceptable bidder.
- b. At the time that the Contractor will be required to offer products/services through the e-procurement system, the State will negotiate an equitable adjustment in unit prices to account for the expected supplier fees on orders placed on the system. The State will negotiate a single pricing structure for contract purchases and (i) prohibit discounting off-system purchases or otherwise offering discriminatory pricing or preferences for orders placed off-system; and (ii) require the Contractor to manually track and report the ordering volume of off-system purchases of supplies/services.

E. Contractor Requirements

1. Contractor Responsibility
Contractor is solely responsible for fulfillment of the responsibilities under the terms and conditions of the contract. The procuring agencies will issue purchase orders and make payments to only the named contractors.
2. Serving Subcontractors
If using servicing subcontractors for the performance of local marketing, maintenance and/or technical support services in accordance with the terms and conditions of the contract. Servicing subcontractors may not directly accept purchase orders or payments for products or services from procuring agencies under the terms and conditions of the contract. The authorized procuring agency has the option of choosing whether to purchase the associated OEM maintenance and/or training to support the equipment purchased.
3. WSCA Administration Fee
The contractor must pay a WSCA administration fee of one tenth of one percent (.10%) in accordance with the terms and conditions of the contract. The WSCA administration fee is not negotiable.
4. Usage Reporting Requirement
Contractor must submit quarterly usage reports to the contract manager. Initiation and submission of the quarterly report is the responsibility of the contractor without prompting or

notification by the contract manager. The due dates of each quarterly contract usage report are April 30, July 31, October 31 and January 31. Quarterly usage reports must contain total dollar usage figures for each WSCA member-state (and non-member state), per product category, per manufacturer, respectively. Usage figures must be provided per maintenance option.

5. Change in Contractor Representatives

The State of Utah/WSCA reserves the right to require a change(s) in contractor representatives if the assigned representative(s) is not, in the opinion of the State of Utah's contract manager, meeting its needs adequately.

6. Website Development and Maintenance

Contractor must maintain said website and keep the information current and correct on a timely basis.

7. Rollout and Marketing

Contractor may conduct a marketing effort as described in Contractor's proposal.

8. Right to Publish

Contractor must secure prior approval from the contract manager for permission to release any information that pertains to the potential work or activities relating to this contract. Failure to adhere to this requirement may result in termination of the contract for cause.

9. Contractor's Scope of Equipment and Services

Contractor may only fill contract orders from the scope of equipment and services under contract. Any sale made under this contract by the Contractor of equipment, products or services not explicitly covered by the scope of equipment, products and related services described in Section F may result in contract termination for cause.

10. E-Rate Requirement

Contractor must participate in the Federal Communication Commission's E-rate discount program established under authority of the Federal Telecommunications Commission Act of 1996. Participation in, and implementation of, this program must be provided without the addition of any service or administration fee by the contractor.

11. Freight Terms of Sale F.O.B. Destination, Freight Prepaid

Contractor will ship all products F.O.B. destination, with all standard freight included in the product price. Contractor may not include standard freight charges on invoicing. Failure to comply with this requirement may result in contract termination for cause. A Purchasing Entity may request expedited shipping for an additional charge.

Any product returns shall be subject to the provisions of the product manufacturer's return policy applicable to the product the procuring agency wishes to return.

12. Price Guarantee Period

Percentage discount depth from list is not subject to a “price increase request” that would result in a less attractive discount; discounts may only be adjusted by the contractor to reflect a deeper discount(s). The discount is applied to manufacturers current published list price schedule(s).

Maintenance may be purchased at manufacturers’ list prices in effect at the time of purchase. Training is available directly from the product manufacturer or their authorized service provider who should be contacted directly for current pricing, training class availability and class schedules.

13. Product Revision Requests

Contractor must submit updated price list(s) upon publication, or any other product model changes, addition of new products, product upgrades or services in a timely manner.

Contractor agrees to delete obsolete and discontinued products from the contract price list(s) on a timely basis. Major product model changes will be incorporated into the contract as soon as possible after product introduction, to be offered at the same rate of discount for the appropriate price list and its discount.

14. Maintenance of Current Price List with Discount(s) Applied

Manufacturer’s price list(s) must be tailored for WSCA with the WSCA contract discount(s) applied; this must be created and maintained by the contractor on an Internet website hosted by the contractor, at no additional charge(s) to the State of Utah or WSCA. This website will be listed as a link from the WSCA website.

F. Contract Scope of Equipment and Related Services

Any sale by the Contractor of equipment, products or services not explicitly covered by the scope of equipment, products and related services described below may result in contract termination for cause.

The information contained in this Section is a summary of the information included in Contractor’s proposal and is provided for information and quick reference. In the event of a conflict between the contents of this Section and Contractor’s proposal, the Contractor’s proposal will take precedence.

1. Discounts of Manufacturer’s List Prices

a. Pricing Discounts (Reference: IBM Proposal Page 732, Section 4F)

Offered Discount by Product Category				
<u>Vendor</u>	<u>Products</u>	<u>Wireless</u>	<u>Routers</u>	<u>Switches</u>
Alcatel	Routers and switches	N/A	35%	35%
Cisco	Routers, enterprise switches and wireless products	37%	37%	37%

Extreme	Switches including 2 year warranty	N/A	N/A	33%
Nortel	Routers and switches	N/A	32%	32%
Lucent	Routers	N/A	37%	N/A

No pricing discounts are applicable to maintenance and training. Maintenance may be purchased at manufacturers' list prices in effect at the time of purchase. Training is available directly from the product manufacturer or their authorized service provider who should be contacted directly for current pricing, training class availability and class schedules.

b. Discount Structures Based on Volume (Reference: IBM Proposal Page 25, Section 4A)

IBM understands your request to establish a Volume Price Agreement for the purchase of the complete range of Data Communications Equipment and Associated OEM Maintenance and Training. Our solution includes the most comprehensive set of manufacturers' products combined with a rich set of Services offerings provided by IBM Global Services. The following are key features of our offer:

- Aggressive Volume Pricing and Service agreements
- Pre-Sales Support - WSCA Dedicated Sales Professionals
- Comprehensive Services Support
- Multiple established Direct Value-add Reseller Alliances
- Proven On-line ordering capability

Our goal is to provide a 'one stop shop' regardless of the platform preference of our clients. It is our depth and breadth of service support that sets us apart from our competitors.

IBM has prepared this response in accordance with Section D. Proposal Content per Section III. Proposal Content Requirements, Format and Organization of the RFP. IBM is presenting this response as a reseller of data communications equipment, maintenance and training. As such, we are presenting the Technical Specification responses as we received from each Original Equipment Manufacturer (OEM) in consideration of this RFP response. Where appropriate, we have annotated responses for IBM and each OEM vendor as provided to us.

Aggressive Volume Price and Services Agreements

IBM understands that cost is an important factor in your selection process. We have attempted to provide the most comprehensive set of manufacturers' offerings under our 'one stop shop' concept since we realize your time is an important component in the Total Cost of doing business formula. Towards that end, our solution focuses not only on competitive product pricing but also considers providing our WSCA participants a flexible, cost effective, easy to administer approach which translates to a lowest Total Cost of acquisition and ownership model.

c. WSCA Member-State Coverage (Reference: IBM Proposal Pages 29-32, Section 4A)

IBM is able to offer these products to all WSCA Member states.

In January 1996, IBM created Industry Solution Units (ISU). Essentially a reorganization of its marketing organizations, the Industry Solution Units are sales divisions within IBM that specialize in a particular industry. Examples of the large ISUs are: Public Sector (Government, Education and Health Industries), Manufacturing, Distribution, and Finance. The benefit to IBM customers is IBM marketing and services personnel who understand their business processes and have created industry-specific solutions to meet unique requirements. Currently there are 2 levels of marketing that cover each WSCA state:

- IBM ISU Client Representatives - the role of the ISU client representative is to work closely with the customer as the primary liaison to IBM. The client representative is responsible for identifying customer needs, obtaining IBM resources for the customer and is ultimately responsible for customer satisfaction with IBM.
- IBM Inside Client Representatives - In addition to the traditional “outside” or “field” client representative, IBM has a team of inside client representatives located in Atlanta who are dedicated to each State and government entities therein.

The IBM client representative coverage for each WSCA state is provided on the IBM WSCA web site: <http://www-1.ibm.com/gold/portal/servlet/gold/wsc/Welcome>

2. Problem Resolution and Escalation

a. IBM Response (Reference: IBM Proposal Pages 36-38, Section 4A)

IBM is dedicated to maintaining a high degree of customer satisfaction. Key to this is a proactive approach to potential problems. However, when problems do occur we have well documented processes to assign the resource(s) necessary to quickly and accurately resolve customer problems.

IBM Complaint Management Process for Customer Complaints and Escalation Management

The Complaint Management Process is the business process IBM uses to manage customer complaints and escalations when “business as usual” or advertised or entitled support processes have been exercised but have failed to resolve the customer’s problem in a timely manner.

A customer complaint is defined as:

- A request from a customer or IBMer to correct an unfulfilled customer expectation or commitment/promise
- A failure from a previous customer-IBM interaction to deliver on a commitment/expectation

- When the customer has attempted to exercise all or part of the advertised or entitled support structures to resolve a problem and is dissatisfied with its progress
- Customers may complain to an IBM executive. In these cases, these are referred to as executive complaints.

A critical situation is defined as:

- A customer complaint that is escalated within IBM to a status of Critical. Escalation to a Critical Situation is considered when:
 - The problem is causing or is about to cause severe impact to the customer's business, or
 - Customer satisfaction has or is about to erode to the point that customer loyalty is in jeopardy, or
 - IBM determines that this problem is jeopardizing IBM's relationship with this customer and additional actions must be taken to save that relationship

An alert is defined as:

- A situation used primarily by the service/marketing offices to notify a pre-established list of people when a customer in that office/area has a critical product failure. This is often used for system down situations so that appropriate people are made aware of this situation and may act to resolve it.

A proactive situation is defined as:

- A situation created internally by IBM for the purpose of complaint avoidance. When an IBM employee becomes aware of a situation which may lead to customer dissatisfaction if not addressed, they may proactively engage additional resources to resolve the problem. The customer may or may not be aware that the situation has been opened.

The Complaint Management (CM) Tool is a consolidated, worldwide information system that supports management of customer and executive complaints, critical situations, proactive and alert situations. It links complaint management personnel in all geographies within IBM business units, product divisions, headquarters, etc. for streamlined escalation management.

How the CM tool works to resolve customer complaints:

- A customer complaint is received by any customer contact person (the Feedback Collector)
- The Feedback Collector (FC) records the customer's issue and contact information and categorizes the customer's primary problem. The requests assistance in assigning the appropriate Resolution Owner based upon the customer's issue
- The Resolution Owner (RO) contacts the customer within 48 hours to acknowledge ownership, explore the customer's conditions of satisfaction, develops an action plan which

may involve escalation to various levels of management across divisions, and resolves the customer complaint. If resolution assistance is needed, the Resolution Owner requests assistance for a Resolution Team Leader (RTL) to be assigned within 48 hours.

- The RO and the RTL document and execute the agreed-to action plan to resolve the situation. When the customer agrees the situation is resolved, the RO closes the situation.

b. Alcatel Response (Reference: IBM Proposal Pages 126-127, Section 4A)

The table below shows the escalation procedures in place at Alcatel. This table (condensed form) shows the problem, amount of time to resolve and who is involved in the decision process. After the table is a more in-depth breakdown of Alcatel's "Technical Escalation Guidelines". Senior management will have visibility into all problem reports and resolutions. This escalation procedure is a standard part of Alcatel's maintenance program.

Escalation contact begins with Alcatel Technical Support at 1-800-995-2696. Technical Support will then follow the procedure outlined below. Steve Tufts, Alcatel's VP of Service and Support, can be contacted at 818-878-4880.

Class of Problem	Time To Resolve	Escalation To
(1) Network down	After 2 hours	Support Mgmt.
	After 8 hours	Engineering Mgmt
	After 24 hours	President
(2) Network severely hampered, but still operational	After 8 hours	Support Mgmt.
	After 24 hours	Engineering Mgmt.
	After 36 hours	President
(3) Network is experiencing moderate problems	After 72 hours	Support Mgmt.
	After 1 week	Engineering Mgmt
(4) Network is experiencing minor problems	After 1 week	Support Mgmt
	After 2 weeks	Engineering Mgmt

Alcatel Technical Support is committed to resolving our Customer's technical issues in a timely manner. Our Technical Escalation Guidelines are intended to provide:

- Management awareness of issues that impact the business operations of our Customers
- Appropriate technical resources to characterize the issue(s)
- Dedicated technical resources to obtain and evaluate the data necessary to reproduce and ultimately resolve our Customer's problem
- Engineering resources to define, assess, and implement the necessary changes to resolve our Customer's problem

c. Cisco Response (Reference: IBM Proposal Pages 291-292, Section 4A)

Cisco encourages WSCA to reference this guide when WSCA -initiated escalation is required. If

WSCA does not feel that there is adequate forward progress, or feels that the quality of Cisco service is not satisfactory, Cisco encourages WSCA to escalate the problem ownership to the appropriate level of Cisco management by asking for the TAC Duty Manager.

Elapsed Time	Priority 1	Priority 2	Priority 3	Priority 4
1 Hour	Customer Engineering Manager			
4 Hours	Technical Support Director	Customer Engineering Manager		
24 Hours	Vice President, Customer Advocacy	Technical Support Director		
48 Hours	President (CEO)	Vice President, Customer Advocacy		
72 Hours			Customer Engineering Manager	
96 Hours		President (CEO)	Technical Support Director	Customer Engineering Manager

Priority 1 problem escalation times are measured in calendar hours 24 hours per day, 7 days per week.

Priority 2, 3, and 4 escalation times correspond with Standard Business Hours.

The Cisco Manager to which the problem is escalated will take ownership of the problem and provide WSCA with updates. Cisco recommends that WSCA -initiated escalations begin at the Technical Manager level and proceed upward using the escalation guideline shown above for reference. This will allow those most closely associated with the support resources to correct any service problems quickly.

Contacting Cisco TAC

North America: 800-553-2447 or 408-526-7209

Cisco's Customer Assurance Program (CAP)

In the event the TAC Customer Service Engineer is not able to resolve the problem quickly, the issue is immediately escalated per the process outlined in the above Escalation Matrix. The Customer Assurance Program is initiated when a particular customer's problem---i.e., a serious software bug, a particularly difficult hardware configuration, or any problem having a severe negative impact on a customer's ability to do business is not resolved via customary support processes. An exceptional resource in Cisco's arsenal of support services for its customers, the Customer Assurance Program (CAP) also monitors, analyzes, and corrects problems related to all levels of priority in a proactive manner.

There are CAP team members located at all Cisco TAC'S, and are available 24x7x365. The CAP team works independent of the TAC, taking an objective view of case types and technical issues to identify and resolve potential problem areas. It is Cisco's highest level of escalation, with visibility up to the Cisco CEO level. Escalation to this level can be achieved through the TAC Duty Managers or Cisco Account Managers. The resources of Cisco product development engineers are also available when necessary.

d. Extreme Response (Reference: IBM Proposal Pages 1224-1225, 1258, Section 4A)

Concerns can be presented to the TAC or principal account manager via email or phone. If a technical issue arose, a case would be opened with the TAC. A more detailed description of this problem can be located in attachment F of the original proposal, called the ExtremeWorks Service Solutions Guide.

Customer Problems can be reported using two methods.

2 Hour Phone Response

Customers can call 1.800.257.3000 to our technical support center and speak directly to a Customer Service Representative (CSR). The CSR will then open a case and forward the call to a technical support engineer. With a 2 -hour response time to all phone calls and a next business day response from receipt to all emails, Extreme Networks ensures a timely response to all your questions.

24 hour Email Response

Email is a very effective way to communicate technical information without spending lengthy time on the telephone. Customers utilize this tool to get answers on configuration questions that are not time-critical. Extreme provides a guaranteed response to all emails addressed to the support center within 24 hours on business days.

Case Logging for all customers

Customers can check the status of open cases and update information during the process. An automated notification system ensures that cases generated via the web are progressing towards resolution.

Escalation Matrix

Located in attachment F of the original proposal, the Extreme Escalation Matrix identifies how a problem is escalated within the organization. In the unlikely event your network goes down and that problem remains unresolved, that problem will have escalated to the CEO within 24 hours. On the other extreme, unanswered general inquiries will have been escalated to a senior manager in 96 hours.

Gordon Stitt, CEO, Dean Floyd, Director of Technical Support, and Skip Wangbickler, VP of customer advocacy are all identified as escalation managers within the escalation procedure. They can all be reached at 888.257.3000.

e. Nortel Response (Reference: IBM Proposal Pages 1456-1457, Section 4A)

First-tier escalation is handled through Nortel Networks. Nortel Networks brings in other parties as required.

Problem notification encompasses a one-call process. All service calls are placed to our Technical Solutions Center (TSC) by dialing toll-free 1-800-2-LAN-WAN (1-800-252-6926). The anticipated and guaranteed response times are in accordance with the terms of the service-contracted customer's specific service level support plan. Complete details of Nortel Networks problem reporting process and escalation procedures for problem resolution are provided in the Customer Service documentation included in the original IBM proposal.

f. Lucent Response (Reference: IBM Proposal Page 1409, Section 4A)

Problem escalation is conducted through our remote technical center accessible via 1-866-LUCENT-8.

Response, Restore, and Resolve Performance Objectives: The response, restore, and resolve time objectives established for Lucent depend on the initial severity level of the request as reported upon Call Receipt and the terms of coverage in the service contract. These objectives are outlined in the following tables:

<i>Description</i>	<i>Standard Coverage 8x5</i>	<i>Premium Coverage</i>
Call Receipt & Routing	24x7	24x7
Coverage Period	8AM – 5PM (based on local time at equipment location) Monday – Friday - Excludes Lucent holidays*	24x7

INS Data Products

<i>Objectives</i>	<i>Standard and Premium Coverage</i>
Response	15 minutes (Severity Level 1) 60 minutes (Severity Levels 2-3)
Restore	6 Hours (SL 1) 12 hours (SL 2)
Resolve	5 - 45 days (SL 1 & 2 Non-design Change) 45 - 180 days (SL 1 & 2 Design Change)

3. Technical Services

a. Equipment Warranty

The warranties and warranty disclaimers applicable to the products and services provided by the Contractor under this Contract are set forth in Part 2 – Warranties of the ICA as revised in the Addendum to the ICA. For non-IBM products and services procured under this Contract, IBM will pass through to the Procuring Agency the warranties provided by the manufacturer or service provider applicable to the specific product or service. Warranty Coverage varies by manufacturer and by product. We have summarized the product warranty coverage below for informational purposes, and product specific warranties may be referenced through the IBM WSCA web site: (<http://www-1.ibm.com/gold/portal/servlet/gold/wsca/Welcome>).

Alcatel

Alcatel products purchased through IBM under WSCA have a 28 months warranty.

Cisco

Cisco Systems' product warranty periods vary by product. Cisco Systems' standard hardware warranty is the longer of (a) 90-days or (b) the period set forth in the Warranty Card accompanying the product. Cisco Systems' standard software warranty is the longer of (a) 90-days or (b) the period set forth in the Warranty Card accompanying the product.

Extreme

Extreme products purchased through IBM under WSCA have a 28 months warranty.

Nortel

Nortel Networks product warranty periods vary by product. In general hardware warranty ranges from 90-days to one-year depending on the Nortel product. Software generally has a warranty of 90-days. The warranty period for the Nortel Hardware and Software shall be the warranty period identified in the Nortel Networks warranty matrix in effect of the date of Customer's order.

Lucent

Lucent product warranty periods vary by product. The standard Lucent warranty support policy is 12-months for hardware and 90-days for software. The Lucent product specific warranties can be referenced through the IBM WSCA web site referenced above.

b. Maintenance Options

As with warranty, manufacturers' maintenance programs vary by product. We have summarized those maintenance options below, but product specific programs may be referenced through the IBM WSCA web site: (<http://www-1.ibm.com/gold/portal/servlet/gold/wsca/Welcome>).

- **Alcatel** (Reference: IBM Proposal Pages 93-96)

SUPPORTbasic

- Provides the customer with access to 7 x 24 technical support and 7 x 24 remote diagnostics

- Provides the customer with access to support over the internet
- Provides the customer with software updates features
- This service does not include replacement of defective hardware

SUPPORTplus Program

- Provides the customer with access to our technical response center 7 days a week, 24 hours a day
- Alcatel places no restrictions on the number or qualification of the customer's personnel eligible to place telephone calls to report product-related questions or problems
- Customers purchasing this level of support received priority over callers requesting technical support under standard warranty

SUPPORTpremier Program (where available)

- All the features of SUPPORTplus, and
- 4-hour on-site replacement of network hardware components. Monday through Friday from 8am to 5pm, Alcatel will dispatch a certified service engineer to arrive on site within four hours of diagnosis.

SUPPORTtotal Program (where available)

- All the features of SUPPORTplus, and
- 4- hour on-site replacement of network hardware components. Seven days a week, 24 hours a day, Alcatel will dispatch a certified service engineer to arrive on site within four hours of diagnosis.

▪ **Cisco (routers, switches and wireless)** (Reference: IBM Proposal Page 293)

The following service levels are available on Cisco equipment. Service levels may vary by product.

- SMARTnet 8x5xNext Business Day—Guaranteed delivery of hardware replacement parts the next business day, provided that the request is received before 3 p.m. local time
- SMARTnet 8x5x4—Guaranteed delivery of hardware replacement parts, from 9 a.m. to 5p.m., Monday through Friday, within four-hour response time.
- SMARTnet 24x7x4—Guaranteed delivery of hardware replacement parts, 24 hours a day, seven days per week, within four-hour response time.
- SMARTnet 24x7x2—Guaranteed delivery of hardware replacement parts, 24 hours a day, seven days per week, within two-hour response time.
- SMARTnet Onsite---Field engineers onsite to install Advance Replacement hardware parts. Over 11,000 field engineers are located throughout 110 countries to supply these services. Response times are based on the delivery option above that is selected.

With the Cisco SMARTnet Program, WSCA members will receive:

- Operating system software refresh on demand
- 24 x 7 x 365 access to Cisco Connection Online (CCO)
- 24 x 7 x 365 access to highly skilled networking technology personnel
- Advance parts replacement in as little as two hours

▪ **Extreme Networks** (Reference: IBM Proposal Pages 1254-1256)

ExtremeWorks Next Business Day advance replacement service solution provides 24x7x365 access to the TAC, annual software subscription service and 24 hour next business day advanced replacement of equipment.

ExtremeWorks 4 hour on-site service solution provides on-site response in 4 hours. Additionally, TAC access and on-site service is available 24x7x365.

▪ **Nortel** (Reference: IBM Proposal Pages 1453-1454)

Option Plan 1 - Time & Materials

Nortel Networks provides Assurance Services through Global Customer Care Services (GCCS) and also provides options for customers to purchase Assurance and Maintenance Service through select partners. These offerings vary from state to state and by product. These solutions can be provided by each individual state's appropriate designated Nortel Networks partner.

Option Plan 2 - Software and Minimal Maintenance

Nortel Networks Next-Business-Day Courier Service, which includes advance shipment and delivery of field-replaceable hardware components the next business day, Monday through Friday, 7:00 a.m. to 7:00 p.m. customer local time (excluding Nortel Networks holidays), is proposed to meet the requirements of this option. Software maintenance and 7x24x365 technical telephone support is also provided.

Option Plan 3 - 8 to 5 Service and Maintenance

Nortel Networks Next-Business-Day OnSite Service, which includes on-site installation of field-replaceable hardware components the next business day, where applicable, Monday through Friday, 7:00 a.m. to 7:00 p.m. customer local time (excluding Nortel Networks holidays), is proposed to meet the requirements of this option. Software maintenance and 7x24x365 technical telephone support is also provided.

Option Plan 4 – 7 X 24 X 4 Service and Maintenance

Nortel Networks Around-the-Clock (24x7, 4-hour) OnSite Service, which includes on-site installation of field-replaceable hardware components within four hours (depending on distance) 7x24x365 (including Nortel Networks holidays), is proposed to meet the

requirements of this option. Software maintenance and 7x24x365 technical telephone support is also provided.

- **Lucent** (Reference: IBM Proposal Pages 1425-1427)

The following service levels are available on Lucent equipment. Service levels may vary by product.

R&R – Repair and Return - 7x24x4

R&R – Repair and Return - 8x5x4

R&R – Repair and Return - Next Business Day

RTS – Remote Technical Support - 7x24

RTS – Remote Technical Support - 8x5

OTS – On site Technical Support - 7x24x4

OTS – On site Technical Support - 8x5

OTS – On site Technical Support - Next Business Day

c. Replacement Parts Availability

For all manufacturers: Replacement parts and accessories are available through the manufacture maintenance programs. Price lists for parts and accessories must be provided by the individual maintenance provider.

- **Alcatel Response** (Reference: IBM Proposal Page 118): If in the future a business decision is made to discontinue a product or product line, Alcatel is committed to provide software support (resolve customer issues and bug fixes) for up to two years, and hardware support for up to 5 years after discontinuance. Existing customers with current maintenance contracts will be notified of any decision to EoL (End of Life) a product within their network. In this scenario, Alcatel would work with the member state to ensure existing commitments are fulfilled and a suitable substitute solution is attained.
- **Cisco Response** (Reference: IBM Proposal Page 282) : Cisco will provide support for Hardware for a period of five (5) years from the date of its announced end-of-life. Cisco will provide support for Software (except for ICSG Software) for a period of thirty six (36) months from the date of first commercial shipment of that release, meaning that for that time period, errors in that release will be corrected either by means of a patch or correction to that release, or in a subsequent release.

For ICSG Software, Cisco will support the most current Major Release and the immediately preceding Major Release of ICSG Software, and all Minor Releases released subsequent thereto, meaning that errors in such releases will be corrected either by means of a patch or correction to such releases, or in a subsequent release.

- **Extreme Response** (Reference: IBM Proposal Page 1252): Extreme will guarantee that standard replacement parts will be available for a minimum of seven (7) years from the date of shipment of the original equipment. Extreme will repair or replace parts within a reasonable time period from receipt of an order.
- **Nortel Response** (Reference: IBM Proposal Page 1451): Once a product is announced to be at the end-of-life, Nortel Networks Enterprise Solutions strives to provide up to 5 years of support for customers with a current contract under the Assurance Service programs at the time of the product's Last Order Date as published in the Nortel Networks Price List. Nortel Networks Enterprise Solutions is not required to provide free support services either during or after this timeframe, and may, in its sole discretion, charge premiums for continued support of any discontinued products. Continued support for any discontinued Product beyond this period may be provided on a commercially reasonable efforts basis, as determined by Nortel Networks.
- **Lucent Response** (Reference: IBM Proposal Page 1422): Replacement parts or equivalents will be provided for the Access Point product, provided a valid maintenance contract is in affect for the product. For products that are discontinued, the replacement parts or equivalents will be available up to 3 years after the end-of-sale of the discontinued product.

d. IBM Value-Add Services (Reference: IBM Proposal Page 108)

Our experienced consulting professionals have extensive expertise with networking technology and products from all major vendors, including Cisco Systems, Alcatel, Lucent Technologies, Nortel Networks, Extreme, 3Com Corporation, as well as IBM. IBM can provide skilled professionals to assist in planning, implementing and operating multi-vendor networks covering all ranges of complexity and geography. Examples of services IBM can provide include:

- Networking and Connectivity Services
- Network Consulting
- Network Integration and Deployment Services
- Network Management Services
- On Site Installation and Implementation Services
- Mobile & Wireless Services
- Learning Services
- Maintenance Services

Any purchasing entity requesting these services will receive a Statement of Work customized to their requirements. For more information about these Network Related Services, please visit the IBM Global Services website at: www-1.ibm.com/services/nc/

e. Training

- **IBM Response** (Reference IBM Proposal Page 42)

IBM Learning Services provides a wide range of platforms, software, professional skills and certification exams. Additionally, there are more choices for accessing training -- in classroom setting, either in an IBM or customer location, interactive on-line “virtual classrooms”, and as self paced multimedia computer courses.

Please refer to www.ibm.com/services/learning/usa for an inclusive list of all class offerings and curriculum road maps.

IBM Learning Services will also create customized training for any unique or customer created applications. In addition, IBM special programs, such as the Unlimited Education Card, Distance Learning, CBT, Distance Learning, Curriculum development, or any special training service as requested by WSCA associated agencies are available.

- **Alcatel Response:** (Reference: IBM Proposal Page 132)

Training class outlines can be provided upon enrollment into a specific class. Class schedules are continually updated and can be viewed on our corporate web site at:
www.ind.alcatel.com/support/training/index.html.

Alcatel has two on-site training options available to customers. On-site training options available are 1 day “Basic” or 1 day “Advance” training sessions and each training class requires the customer to provide the necessary networking equipment.

Alcatel Engineers can also provide on-site, customized training. This training includes hands-on labs, teaching material, and Alcatel provided equipment on an "as needed" basis. Deliverables include leader-led instruction, training material, and might include equipment for training class use.

Formal registration is required for all courses and should be completed at least three weeks prior to the class start date. To begin the registration process, complete the online application form for either basic (<http://www.ind.alcatel.com/support/training/form-training.html>) or advanced (<http://www.ind.alcatel.com/support/training/form-training.html>) classes. An Alcatel Training Representative will contact you to complete your registration.

For more information, send email to Training@ind.alcatel.com or call US and Canada: 1-800-999-9526 x4768

- **Cisco Response** (Reference: IBM Proposal Page 307)

Cisco training is provided by Cisco Learning Partners. Pricing, scheduling and location of training is set by the individual learning partners. Detailed information and scheduling is available by referencing Cisco’s web site at:
<http://www.cisco.com/warp/customer/10/wwtraining/>.

- **Extreme Response** (Reference: IBM Proposal Pages 1258-1259)

Extreme Networks offers the following training courses

1. GSE-101: Command Line Interface and Layer 2 Switch Configuration
2. LE-201: IP Unicast Routing and Layer 3 Switch Configuration
3. BGP-220 : Border Gateway Protocol (BGP4) Concepts and Configuration
4. NDT-301: Interactive Network Design and Troubleshooting
5. OSPF-320: Focusing in on OSPF

These courses can be presented at the Buyer's site or at a corporate training facility. Customized courses can also be developed and delivered in a similar fashion. For on-site trainings, equipment is included in the fee.

- **Nortel Response** (Reference: IBM Proposal Page 1637)

Global Knowledge – Nortel Networks Premier Education Partner

An up-to-date Course Schedule for all of Nortel's Technical Training Course offerings, complete with course description, dates and locations, is maintained on the World Wide Web and accessible at <http://get.globalknowledge.com/norteltraining/>.

Additionally, Global Knowledge is now Nortel Networks Premier Education Partner responsible for the development and delivery of Nortel Networks Enterprise Solutions products technical training in North America. Leveraging Global Knowledge's core competency as the world's largest independent IT education company as well as the world's largest networking training company, ensures that Nortel Networks can continue to deliver optimal, high quality training to customers. With the addition of Nortel Networks North American Enterprise Solutions Training organization, Global Knowledge employs over 1,700 employees in 21 countries, offering a multitude of courses in 16 languages.

Global Knowledge is the world's leading IT education integrator whose entire focus is quality education. Nortel Networks customers benefit from and have access to the complete IT solutions offered by Global Knowledge. This comprehensive breadth of offerings provides Nortel Networks customers access to over 400 different courses on a daily basis. Global Knowledge's delivery mediums place them well above other training providers. No other provider offers Nortel Networks customers as many different IT courses, in combination with as comprehensive a delivery mix:

- Instructor-led classroom training
- Live interactive distance learning solutions
- Self-paced training
- Onsite training
- Customized programs

- **Lucent Response** (Reference: IBM Proposal Page 1429)

Training is available from Lucent learning. The courses are described below on our training website at: <http://www.lucent-networkcare.com/consulting/education>.

Exhibit 1 to Addendum 1

ADDENDUM TO THE IBM CUSTOMER AGREEMENT BETWEEN THE STATE OF UTAH AND INTERNATIONAL BUSINESS MACHINES CORPORATION

The State of Utah (“State” or “Agency”) and International Business Machines Corporation (“IBM” or “Contractor”) hereby agree to modify, as stated below, the IBM Customer Agreement (“ICA”) included as part of the Western States Contracting Alliance (“WSCA”) Contract for Data Communications Equipment and Associated OEM Maintenance and Training (“WSCA Contract”). If there is a conflict between the terms of this Addendum and the ICA, the terms of this Addendum shall prevail.

1. Section 1.1 Definitions is revised by changing the following definition to read as follows:

”**Enterprise** is (1) the State of Utah as the Lead State acting on behalf of the Western States Contracting Alliance (WSCA) and its Participating States and Purchasing Entities as it relates to the WSCA Contract, or (2) the Purchasing Entity as it relates to the purchase of Products and Services under the WSCA Contract.”

2. Section 1.5 Prices and Price Changes, subsection Price Increases is revised by changing the first sentence of the second paragraph to read:

”Except as precluded by the Price Guarantee Period provision in Attachment A – Addendum 1 to the WSCA Contract, IBM may increase one-time charges and hourly rates without notice.”

3. Section 1.6 Invoicing, Payment, and Taxes is revised as follows:

- a. Change the first sentence of the second paragraph to read:

“For a Product with a one-time charge, payment is due thirty (30) days following the date the Product is delivered to the Purchasing Entity or the date a correct invoice is received, whichever is later.”

- b. Change the first sentence of the third paragraph to read:

”The Purchasing Entity agrees to pay charges included in Contractor’s invoice in accordance with the terms of the WSCA Contract.”

4. Section 1.9 Patents and Copyrights is revised as follows:

- a. Change the last sentence of the second paragraph to read:

”We will then give you a credit equal to the net book value for the Product determined in

accordance with generally-accepted accounting principles.”

b. Add the following under Claims for Which We are Not Responsible:

”4. infringement by the ICSG software, alone or in combination with any other Products whether or not those Products are provided by us.”

5. Section 1.10 Limitation of Liability is revised to read as follows:

“3. the amount of any other actual loss or damage, up to the amount of the charges (if recurring, 12 months’ charges apply) for the Product or Service that is the subject of the claim.”

6. Section 1.15 Changes to the Agreement Terms is revised to read as follows:

”Any changes to the terms of this Agreement must be in writing and signed by both of us. Additional or different terms in any order or written communication from you are void.”

7. Section 1.18 Governing Law is revised to read as follows:

”The laws of the State of Utah govern this Agreement.”

8. Section 2.3 Items Not Covered by Warranty is revised as by replacing the last sentence with the following:

“For non-IBM Products and Services IBM will pass through to the Purchasing Entity the warranties provided by the manufacturers or service providers. IBM will escalate the communication of warranty problems with the manufacturer’s or service provider’s management that are not resolved timely.”

9. Section 3.3 Production Status is revised by deleting the second sentence which reads as follows:

“In some cases, the Machine may not be new and may have been previously installed.”

10. Section 5.1 Maintenance Services Termination is revised by replacing the second paragraph “We may terminate Maintenance Services...at least one year” with the following:

”IBM may withdraw a Service or support for an eligible Product on three months’ written notice to you. If IBM withdraws a Service for which you have prepaid and IBM has not yet fully provided it to you, IBM will give you a prorated refund.”

11. Section 5.2 Continuing Support Services is not applicable to the WSCA Contract.

12. Section 5.3 Project Support Services is revised by changing the last sentence in the subsection entitled “Project Support Services Termination” to read as follows:

“Payment includes any charges we incur in terminating subcontracts as specified in the Statement of

Work signed by IBM and the Purchasing Entity.”

13. Part 6 Options is not applicable to the WSCA Contract.

14. Cisco Systems’ ICSG Software

The following applies to all Statements of Work (SOW) or other Transaction Documents under which IBM will provide products and/or services in conjunction with a Cisco Systems ICSG software product (e.g. ICM, NAM, CIS).

”You will enter into a license agreement with a third party supplier for the ICSG software. We will not be a party to that license agreement and we will not be liable for violations of that license agreement between you and the third party nor shall we have any liability or obligations of indemnification to you under that license agreement.”

Exhibit 2 to Addendum 1

Below is the Cisco Warranty as described in Section D.8, paragraph B of Addendum 1.

ATTACHMENT 1

1.0 LIMITED WARRANTY.

- 1.1 Hardware. Cisco warrants that from the date of shipment by Cisco to Customer, and continuing for a period of the longer of (a) ninety (90) days or (b) the period set forth in the Warranty Card accompanying the Product, the Hardware will be free from defects in material and workmanship, under normal use. This limited warranty extends only to the original user of the Product. Customer's sole and exclusive remedy and the entire liability of Cisco and its suppliers under this limited warranty will be, at Cisco's or its service center's option, shipment of a replacement within the period and according to the replacement process described in the Warranty Card, or a refund of the purchase price, if the Hardware is returned to the party supplying it to Customer, if different than Cisco, freight and insurance prepaid. Cisco replacement parts, used in Hardware repair, may be new or equivalent to new. Cisco's obligations hereunder are conditioned upon the returned of affected Products, in accordance with Cisco's then-current Return Material Authorization (RMA) procedures.
- 1.2 Software. Cisco warrants that from the date of shipment by Cisco to Customer and continuing for a period of the longer of (a) ninety (90) days or (b) the period set forth in the Warranty Card accompanying the Product: (a) the media on which the Software is furnished will be free of defects in materials and workmanship, under normal use; and (b) the Software substantially conforms to its published specifications. Except for the foregoing, the Software is provided AS IS. This limited warranty extends only to the Customer who is the original licensee. Customer's sole and exclusive remedy and the entire liability of Cisco and its suppliers under this limited warranty will be, at Cisco or its service center's option, repair, replacement, or refund of the Software if reported (or, upon request, returned) to the party supplying the Software to Customer, if different than Cisco. In no event, does Cisco warrant that the Software is error free or that Customer will be able to operate the Software without problems or interruptions. In addition, due to the continual development of new techniques for intruding upon and attacking networks, Cisco does not warrant that the Software or any equipment, system or network on which the Software is used will be free of vulnerability to intrusion or attack.
- 1.3 Y2K. Cisco represents that Products which it has designated as "Year 2000 Compliant" (or Status Description "Green"), as set forth in the "Compliance Table," (including accompanying Notes), located in Cisco's "Year 2000 Compliance" web pages beginning at <http://www.cisco.com> (the "Year 2000 Pages"), are "Year 2000 Compliant," meaning that, as delivered to Customer:
- 9.3.1 The Products accurately process data and time calculations before and during the years 1999 and 2000;
- 9.3.2 All manipulation of time-related data yields the desired results for valid date values within the application domain;
- 9.3.3 Date elements in those Products use four digit storage and indicate century to eliminate the chance for errors;
- 9.3.4 If a date element exists without a century indication, the correct century continues to be unambiguous and produces accurate results; and Software accurately processes date and time data when used in conjunction with other Year 2000 compliant software products.
- Should a Product that is so identified as "Year 2000 Compliant" not be Year 2000 Compliant, or should Cisco otherwise breach the foregoing representation, Cisco will, as Customer's sole and exclusive remedy, repair or replace the Product so that it becomes Year 2000 Compliant or, if Cisco is unable to repair or replace the Product to make it Year 2000 Compliant, Cisco will refund the purchase price of the Product paid to Cisco, provided that Customer returns the Product to Cisco, as originally delivered by Cisco (except for normal wear and tear) and pursuant to Cisco's then-current RMA policy. The foregoing representation and remedy shall only apply to Products returned prior to January 31, 2001, or to Products returned before the Products are no longer supported pursuant to Cisco's standard support policies, whichever event first occurs. Each Product ordered will be subject to Cisco's then-current "Year 2000 Pages" as of the date of delivery.
- 1.4 Restrictions. This warranty does not apply if the Product (a) has been altered, except by Cisco, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Cisco, (c) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident; or (d) is sold or, in the case of Software, licensed, for beta, evaluation, testing or demonstration purposes for which Cisco does not receive a payment of purchase price or license fee.
- 1.5 DISCLAIMER OF WARRANTY. EXCEPT AS SPECIFIED IN THIS WARRANTY, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, SATISFACTORY QUALITY OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE WARRANTY PERIOD. This disclaimer and exclusion shall apply even if the express warranty set forth above fails of its essential purpose. The date of shipment of a Product by Cisco is set forth on the packaging material in which the Product is shipped. Customer acknowledges that the Internet URL address and the web pages referred to above may be updated by Cisco from time to time; the version in effect at the date of delivery of the Products to the Customer shall apply.

ATTACHMENT B
Standard Contract Terms and Conditions
Western States Contracting Alliance (WSCA)

(Note: There have been changes/clarifications made to the following terms: 1, 4, 8, 10, 12, 14, 18, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 37, 38, 39, 40, and 41.)

1. PARTICIPANTS: Western States Contracting Alliance (“WSCA”) is a cooperative group contracting consortium for state government departments, institutions and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming. Obligations under this contract are limited to those Participating States who have signed (and not revoked) an Intent to Contract at the time of award, or who have executed a Participating Addendum where contemplated by the solicitation. Financial obligations of Participating States are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial obligations on behalf of political subdivisions. Unless otherwise specified in the solicitation, the resulting price agreement(s) will be Permissive price agreement(s) as defined below.

2. DEFINITIONS:

“Lead State” means the State conducting this cooperative solicitation and centrally administering any resulting price agreement.

“Offer” or “Bid” or “Proposal” refers to the offer submitted in response to a solicitation, whether denominated as an invitation for bid, request for proposal, or otherwise. “Bidder” or “Offeror” similarly refers to the person, company, or other entity submitting the bid or proposal that constitutes an offer capable of acceptance, regardless of the solicitation method used.

“Permissive price agreement” means that placement of orders through the price agreement is discretionary with Purchasing Entities. They may satisfy their requirements through the price agreement without using statutory or regulatory procedures (e.g. invitations for bids) to solicit competitive bids or proposals. Purchasing Entities may, however, satisfy requirements without using the price agreement so long as applicable procurement statutes and rules are followed.

“Participating Addendum” means a bilateral agreement executed by the contractor and a Participating State that clarifies the operation of the price agreement for the State concerned, e.g. ordering procedures specific to a State, and may add other state-specific language or other requirements.

“Participating State” means a member of WSCA who has indicated its intent to participate as disclosed on the solicitation, or who subsequently signs a Participating Addendum where contemplated by the solicitation.

“Purchasing Entity” means a Participating State or another legal entity, such as a political subdivision, properly authorized by a Participating State to enter into a contract for the purchase of

goods described in this solicitation. Unless otherwise limited in this solicitation or in a Participating Addendum, political subdivisions of Participating States are Purchasing Entities and Participants authorized to purchase the goods and/or services described in this solicitation.

3. QUANTITY ESTIMATES: Estimated quantities are informational and not to be construed as a warranty of accuracy of historical or anticipated volumes or a guarantee to purchase any amount.

4. SPECIFICATIONS: Any deviation from specifications must be clearly indicated by offeror, otherwise, it will be considered that the proposal is in compliance. When BRAND NAMES or manufacturers' numbers are stated in the specifications they are intended to establish a standard only and are not restrictive unless the solicitation says "no substitute." Offers will be considered on other makes, models or brands having comparable quality, style, workmanship and performance characteristics. Alternate proposals offering lower quality or inferior performance will not be considered.

5. ACCEPTANCE OR REJECTION OF BIDS AND PROPOSALS: The Lead State reserves the right to accept or reject any or all bids or proposals, or parts of bids or proposals, and to waive informalities therein.

6. SAMPLES: Generally, when required, samples will be specifically requested in the solicitation. Samples, when required, are to be furnished free of charge. Except for those samples destroyed or mutilated during testing, samples will be returned at an offeror's request, transportation collect.

7. CASH DISCOUNT TERMS: Offeror may quote a cash discount based upon early payment; however discounts offered for less than 30 days will not be considered in making the award. The date from which discount time is calculated shall be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date shall be the date of acceptance of the merchandise.

8. TAXES: Offered prices shall be exclusive of state sales and federal excise taxes. Where the state government entities are not exempt from sales taxes on sales within their state, the contractor shall add the sales taxes on the billing invoice as a separate entry. The Lead State or Participating State or other participant will supply applicable documentation showing tax exempt status.

9. MODIFICATION OR WITHDRAWAL OF BIDS AND PROPOSALS: Bids and proposals may be modified or withdrawn prior to the time set for receipt of bids or proposals. After the time set for receipt of bids or proposals, no proposal may be modified or withdrawn.

10. PATENTS, COPYRIGHTS, ETC: The Contractor will defend WSCA, the Participating States, and the Purchasing Entities, as well as the officers, agents and employees of WSCA, the Participating States and the Purchasing Entities, against such third party claims as described in Section 1.9 Patents and Copyrights and Section 1.10 Limitation of Liability of the ICA (see Exhibit 1), as revised in the Addendum to the IBM Customer Agreement (ICA).

11. AWARD: Multiple contracts may be awarded as a result of this solicitation. Awards in requests for proposals (competitive sealed proposals) shall be made to the responsible offeror(s) whose proposals

are determined to be the most advantageous to the Participating States, taking into consideration price and the other evaluation factors set forth in the solicitation. Unless otherwise stated in the solicitation, an award in an solicitation denominated as an invitation to bid will be made to the lowest responsive and responsible bidder(s) meeting specifications and all bid terms and conditions. The Participating States reserve the right to award items separately or by grouping items, or by total lot.

12. NON-COLLUSION: By signing the proposal the offeror certifies that the proposal submitted, has been arrived at, and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the solicitation, designed to limit independent bidding or competition.

13. TERMINATION: Unless otherwise stated in the solicitation, any contract entered into as a result of this solicitation may be terminated by either party upon 60-days notice, in writing, prior to the effective date of the termination. Further, any Participating State may terminate its participation upon 30-days written notice, unless otherwise limited or stated in the special terms and conditions of the solicitation. Any termination under this provision shall not affect the rights and obligations attending orders outstanding at the time of cancellation, including any right of any Purchasing Entity to indemnification by the Contractor, rights of payment for goods/services delivered and accepted, and rights attending any warranty or default in performance in association with any order.

14. DEFAULT AND REMEDIES:

A. Any of the following may constitute cause to declare the contract or any order under this contract in default:

- (1) Nonperformance of material contractual requirements; or
- (2) A material breach of any term or condition of this contract.

B. A written notice of default (specifying the nature of the default), and a reasonable opportunity to cure, shall be issued by the party claiming default, whether the Lead State (in the case of breach of the entire agreement), a Participating State (in the case of a breach of the Participating Addendum), the Purchasing Entity (with respect to any order), or the Contractor. Time allowed for cure shall not diminish or eliminate any potential liability for damages.

C. If the default remains after the opportunity for cure, the non-defaulting party may:

- (1) Exercise any remedy provided by law or equity;
- (2) Terminate the contract or any portion thereof, including any orders issued against the contract;
- (3) In the case of default by the Contractor, and to the extent permitted by the law of the Participating State or Purchasing Entity, suspend Contractor from receiving future solicitations.

15. LAWS AND REGULATIONS: Any and all supplies, services and equipment offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

16. CONFLICT OF TERMS: In the event of any conflict between these standard terms and conditions and any special terms and conditions in the solicitation, the special terms and conditions shall govern.

17. REPORTS: The contractor shall submit quarterly reports to the Lead State contract administrator, and upon request to any Participating State, showing the quantities and dollar volume of purchases by each Purchasing Entity.

18. HOLD HARMLESS: The Contractor shall defend the WSCA, the Participating States, and Purchasing Entities, as well as the officers, agents and employees of WSCA, from any and all loss, damage, injury and liability set forth in third party claims resulting from bodily injury (including death), or damage to real property and tangible personal property to the extent caused by Contractor, or its subcontractors, as a result of Contractor's negligent or intentionally wrongful performance of this Contract. Contractor will defend WSCA, the Participating States, and Purchasing Entities against the above claims at Contractor's expense and pay all costs, damages, and attorney's fees that a court finally awards provided that WSCA, the Participating State or Purchasing Entity, as applicable, (1) promptly notifies Contractor in writing of the claim, and (2) allows Contractor to control and cooperates with Contractor in the defense and any related settlement negotiations.

19. ORDER NUMBERS: Contract order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

20. GOVERNING LAW AND VENUE: This procurement shall be governed and the resulting price agreement construed in accordance with the laws of the Lead State. The construction and effect of any Participating Addendum or order against the price agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity's State. Venue for any claim, dispute or action concerning the construction and effect of the price agreement shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against the price agreement or the effect of a Participating Addendum shall be in the Purchasing Entity's State.

21. DELIVERY: The prices offered shall be the delivered price to any WSCA state agency or political subdivision. All deliveries shall be F.O.B. destination with all standard transportation and handling charges paid by the contractor. A Purchasing Entity may request expedited shipping for an additional charge. Contractor will bear risk of loss for the Machines through its date of receipt by the Purchasing Entity. Thereafter, WSCA state agency or political subdivision will assume the risk.

22. WARRANTY: : The warranties and warranty disclaimers applicable to products and services provided by the Contractor under this contract are set forth in Part 2 – Warranties of the ICA as revised in the Addendum to the IBM Customer Agreement.

23. AMENDMENTS: The terms of this contract shall not be waived, altered, modified, supplemented or amended in any manner except by a written amendment to the contract executed by the Contractor and the Contract Administrator of the Lead State.

24. ASSIGNMENT/SUBCONTRACT: Neither party shall assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the other party and in the case of the Contractor, without approval of the Contract Administrator of the Lead State. Notwithstanding the foregoing, Contractor may use affiliates and subcontractors in the delivery of products or in the performance of services.

25. NONDISCRIMINATION: The offeror agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. The offeror further agrees to furnish information and reports to requesting State(s), upon request, for the purpose of determining compliance with these statutes. Offeror agrees to comply with each individual state's certification requirements, if any, as stated in the special terms and conditions. This contract may be terminated after notice and a reasonable opportunity to cure if the offeror fails to comply with the provisions of these laws and regulations. The offeror must include this provision in every subcontract relating to purchases by the States to insure that subcontractors and vendors are bound by this provision.

26. SEVERABILITY: If any provision of this contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held to be invalid.

27. INSPECTIONS: Goods furnished under this contract shall be subject to inspection and test by the Purchasing Entity at times and places specified in the order. If during the warranty period, the Purchasing Entity finds goods furnished to be incomplete or not in material compliance with their written specifications, the Contractor will correct or replace them in accordance with Part 2 – Warranties of the IBM Customer Agreement as revised in the Addendum to the IBM Customer Agreement.

28. PAYMENT: Payment for a Product with a one-time charge will be due 30 days following the date the Product is delivered to the Purchasing Entity or the date a correct invoice is received, whichever is later. Payment for recurring charges (such as maintenance) will be due 30 days following the date a correct invoice is received. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. Payments will be remitted by mail. Payments may be made via a Purchasing Entity's "Purchasing Card".

29. FORCE MAJEURE: Neither party to this contract shall be held responsible for delay or default caused by strike, fire, riot, acts of God and/or war or other event which is beyond that party's reasonable control.

30. HAZARDOUS CHEMICAL INFORMATION: The Contractor will provide one set of the appropriate material safety data sheet(s) and container label(s) upon delivery of a hazardous material to the Purchasing Entity agency. All safety data sheets and labels will be in accordance with each Participating State's pre-identified written requirements.

31. FIRM PRICE: Unless otherwise stated in the special terms and conditions, for the purpose of award, offers made in accordance with this solicitation must be good and firm for a period of ninety (90) days from the date of receipt of bids or proposals. After award, the Price Guarantee Period provision, Section E.12., in Addendum 1 to the Contract will apply.

32. EXTENSION OF PRICES: In the case of error in the extension of prices in the proposal, the unit prices will govern.

33. PROPOSAL PREPARATION COSTS: WSCA is not liable for any costs incurred by the offeror in preparation of the bid or proposal.

34. CERTIFICATION REGARDING CONFLICT OF INTEREST: Contractor certifies that it has not offered or given any gift or compensation prohibited by the state laws of any Participating State to any officer or employee of WSCA or Participating States to secure favorable treatment with respect to being awarded this contract.

35. INDEPENDENT CONTRACTOR: Contractor shall be an independent contractor, and as such shall have no authorization, express or implied to bind the Participating States to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for WSCA or the Participating States, except as expressly set forth herein.

36. POLITICAL SUBDIVISION PARTICIPATION: Participation under this contract by political subdivisions (i.e., colleges, school districts, counties, cities, etc.,) of the WSCA participating states shall be voluntarily determined by the political subdivision. The contractor agrees to supply the political subdivisions based upon the same terms, conditions and prices.

37. E-RATE COMPLIANCE: Contractor agrees to participate in the Federal Communication Commission's E-rate discount program established pursuant to the Telecommunications Act of 1996, and in accordance with any mutually agreed to State and local government E-rate related requirement(s) of the authorized procuring agency.

38. CERTIFICATION REGARDING DEBARMENT: The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency, provided that if the CONTRACTOR cannot certify this statement, Contractor will attach a written explanation for review by WSCA.

39. RECORDS ADMINISTRATION: The Contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the contractor for costs authorized by this contract. The foregoing will not include any information on pricing methodology, Contractor's costs or Contractor's profits or those of its subcontractors. These records will be retained by the

contractor for at least four years after the contract terminates, or until all audits initiated within the four years have been completed, whichever is later.

40. AUDIT OF RECORDS: The contractor agrees to provide WSCA, State and Federal auditors, and state agency staff access to copies of the records or portions of the records required to determine compliance with this contract, for audit and inspection, and monitoring of services. The parties agree that the term “Records” refers to non-confidential information relating to the Purchasing Entity orders under this contract, contractor billings and Purchasing Entity payments, rather than confidential information such as trade secrets, personnel data, product or service costing or profit data, research and development data and the like.

41. PRICES AS CEILING: Price agreement percentage discounts set forth in this contract applied against the manufacturer’s current list price at the time the order is placed represent ceiling prices for the products and services covered by this price agreement. The Contractor in its sole discretion may offer additional discounts or different terms as part of Announced Promotion Prices or Large/Special Order Negotiated Prices.

“Announced Promotion Prices” are special prices offered for specific products or services for defined time periods under defined terms and conditions. If the Contractor elects to offer Announced Promotion Prices, then such prices will be available to all WSCA Purchasing Entities during the defined time period and under the defined terms and conditions.

Contractor is willing to negotiate “Large/Special Order Negotiated Prices” with any WSCA Purchasing Entity. “Large/Special Order Negotiated Prices” are special prices that Contractor may offer to a WSCA Purchasing Entity under additional defined terms and conditions. Large/Special Order Negotiated Prices will be available to all WSCA Purchasing Entities that meet the Large/Special Order Negotiated Prices terms and conditions as defined. Such special pricing shall only apply to those items that meet the applicable additional terms and conditions (e.g., order quantity, specific products, time limitations, bundled purchase of specific products and services, etc.).

Contractor will notify the Lead State of any Announced Promotion Prices that Contractor will make available to WSCA under this contract. Upon request, the Contractor will furnish the Lead State with information regarding orders under this contract based on Large/Special Order Negotiated Prices.

42. STATE PARTICIPATION/UNIQUE TERMS AND CONDITIONS: Apart from the Lead State conducting the solicitation, the States indicated on Attachment A have signified their intent to enter into a price agreement and, except where Attachment A or the solicitation requires execution of a Participating Addendum, are considered Participating States for purposes of this solicitation and the resulting contract. Attachment A of the Solicitation includes any significant State-specific provisions required by the laws, regulations, or procurement practices of the State(s).

Additional States may be added with the consent of the Contractor and the Lead State (on behalf of the WSCA Participating States) through execution of a Participating Addendum.

Revision Date: April 2001